No. 9/7/86-6Lab./164.1—In pursuance of provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Rohtak, in respect of the dispute between the Workman and the Management of Administrator, Municipal Committee, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 17 of 1985.

between

SHRI DEEP CHAND, WORKMAN AND THE MANAGEMENE OF ADMINISTRATOR, MUNICIPAL COMMITTEE, ROHTAK

Present:—

Shri H. R. Vats, A. R., for the workman.

Shri Ram Singh, Joshi, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Deep Chand and the management of Administrator, Municipal Committee, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette notification No. 6924—29, dated 23rd February, 1985:—

"Whether the termination of services of Shri Deep Chand is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he employed with the respondent as a Peon since 20th June, 1979, against leave vacancy and from 27th June, 1981 to 24th November, 1982, on regular basis, but the respondent choose to terminate his services unlawfully just to accommodate its favourite, though the work and conduct of the workman all through has been satisfactory.

3. In the reply filed by the respondent, the claim of the petitioner has been controverted in as much as, it is alleged that the petitioner was employed on daily wages and not as a regular employee as alleged. It is further alleged that the petitioner never claimed re-instatement prior to 12th January, 1984, the date on which the demand notice was raised and so, the present claim is barred under section 33-C(i) of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act). It is further alleged that since the services of all the employees of the Municipal Committee are governed by the Punjab Civil Services Rules, so, jurisdiction of this Court stands ousted. It is also alleged that the Labour Department of the Government of Haryana has also held that the respondent committee is not an "industry" as defined in section 2 (j) of the said Act and so, it is alleged that the reference is bad in law.

4. On the pleadings of the parties, the following issues were settled for decision on 16th May, 1985:—

(1) Whether the reference is bad in law? OPR.

(2) Whether the termination of services of Shri Deep Chand is justified and in order? If not, to what relief is he entitled?

5. In support of his claim, the petitioner appeared as his own witness as WW-1 and the management examined Shri Ram Singh Joshi, Office Superintendent of the respondent committee as MW-1.

6. Learned Authorised Representatives of the parties heard. My findings on the issues are as below:—

ISSUE No. 2:

7. The petitioner made a statement completely in corroboration of the avernments made in the Claim Statement, so, I need not suffer repetition. He denied the suggestion that he remained employed on daily wages till his date of termination. Shri Ram Singh Joshi, MW-1 Office Superintendent of the respondent committee stated that the petitioner was employed as a Peon in the year 1981 against a leave vacancy, in which capacity he served up to the year 1982 and thereafter, the Deputy Commissioner made regular appointment of Shri Hem Raj and so, the services of the petitioner were dispensed with.

8. There is no denying the fact that the respondent committee did not comply with the mandatory provisions of section 25F of the said Act

while terminating the services of the petitioner, because no notice pay or retrenchment, compensation was paid to him, though the petitioner has actually worked for more than 240 days with the respondent during the last 12 calendar months from the date of his termination. This is evident even from the date furnished by the respondent in the Court on 26th November, 1985, that the petitioner has worked for 309 days with the respondent even from January, 1982 to November, 1982. While calculating 240 days the Court has to taken into consideration last twelve calendar months from the date of termination. So, there is no escape from the conclusion that the petitioner has worked for more than 240 days with the respondent during the last twelve calendar months from the date of his termination and as such, statutary provisions of section 25F are fully attracted in this case, compliance of which was never made by the respondent and so, the order of termination passed was illegal and arbitrary and cannot be sustained.

ISSUE No. 1:

9. To buttress this plea, the respondent has drawn my attention to Annexure C of the written statement, copy of the letter issued by the Labour Department, Government of Haryana that the Board of School Education, Haryana is not an "industry", because its employees are governed by the provisions of Punjab Civil Services Rules. Taking a cue from this letter, on behalf of the respondent it was contended that since the provisions of Punjab Civil Service Rules are applicable to the employees of the respondent committee, so, Industrial Disputes Act, 1947, will not apply. This contention is absolutely unfounded. *In the Banglore Water Supply and Sewerage Board case reported in* 1978 *Lab. I.C.* 467 a seven Bench Judges of the Hon'ble Supreme Court of India dealt in detail about the scope, sweep and ambit of the term "industry" as defined in section 2(j) of the said Act. Their Lordships were endorsing the law laid down in *Nagpur Municipality reported in AIR* 1960 *S.C.* 675 observed in para 67 of the judgement as under:—

> "Sri Justice Suba Rao, with uninhibited logic, chases this thought and reaches certian tests in Nagpur Municipality (AIR 1960 S.C. 675), speaking for a unanimous bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of "industry" is resolved in some measure. Although foreign decisions, word and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity of direct co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of services to the community, etc., as implied inarticulately in the concept of "industry", we by-pass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the wellknown canons of construction exert real pressure on our judgement. And, in this latter process, next to Banerji (AIR 1953 SC 58) comes Corperation of Nagpur (A.I.R. 1960 S.C. 675) which spreads the convas wide and illumines the expression analogous to trade or business', although it comes a few days after Hospital Mazdoor Sabha (AIR 1960 S.C. 610) decided by the same bench."

10. These observations of the Supreme Court clinches the controversy in favour of the petitioner and there is no difficulty in holding that the respondent Municipality especially its administrative wing falls within the ambit of the term "industry" as defined in section 2(j) of the said Act and as such, the provisions of the Industrial Disputes Act, 1947 will apply in this case. So, this issue is answered against the management.

11. In the light of my foregoing discussion, there is no difficulty in holding that the order of termination passed against the workman was illegal, unlawful and arbitrary, which was passed in flagrant disregard of the provisions of section 25F of the said Act and as such, the same is set aside and since the demand notice was raised by the petitioner after a lapse of just more than one year of his termination, he cannot be deprived from the benefits of back wages, because the Courts have usually frowned upon references delayed for more than three years after termination. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Dated the 24th December, 1985.

Endorsement No. 17-85/13, dated the 2nd January, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hissar.

No. 9/7/86-6Lab./165.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of M/s. Administrator, Municipal Committee, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 19 of 85.

between

SHRI CHANDER PAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S. ADMINISTRATOR, MUNICIPAL COMMITTEE, ROHTAK.

Present:—

Shri H. R. Vats, A.R. for the workman.

Shri Ram Singh Joshi, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Chander Pal and the management of M/s. Administrator, Municipal Committee, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 6966-71, dated 23rd February, 1985:—

Whether the termination of services of Shri Chander Pal Singh, is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Peon since 21st July, 1970 against leave vacancy and from 31st May, 1977 to 24th November, 1982 on regular basis, but the respondent choose to terminate his services unlawfully on 24th November, 1982 just to accommodate its favourits, though the work and conduct of the workman all through has been satisfactory.

3. In the reply filed by the respondent, the claim of the petitioner has been controverted inasmuch as, it is alleged that the petitioner was employed on daily wages and not as a regular employee as alleged. It is further alleged that the petitioner never claimed reinstatement prior to 12th January, 1984, the date on which the demand notice was raised and so, the present claim is barred under section 33C(i) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further alleged that since the services of all the employees of the Municipal Committee are governed by the Punjab Civil Service Rules, so, jurisdiction of this Court stands ousted. It is also alleged that the Labour Department of the Government of Haryana has also held that the respondent committee is not an "industry" as defined in secion 2(j) of the said Act and so, it is alleged that the reference is bad in law.

4. On the pleadings of the parties, the following issues were settled for decision on 16th May, 1985:—

(1) Whether the reference is bad in law? OPR.

(2) Whether the termination of services of Shri Dalip Singh, is justified and in order? If not, to what relief is he entitled?

5. In support of his claim, the petitioner appeared as his own witness as WW-1 and the management examined Shri Ram Singh Joshi, office Superintendent of the respondent committee as MW-1.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below:—

ISSUE No. 2:

7. The petitioner made a statement completely in corroboration of the averments in the Claim Statement so, I need not suffer repetition. He denied the suggestion that he remained employed on daily wages till his date of termination. Shri Ram Singh Joshi, MW-1 office Superintendent of the respondent committee stated that the petitioner was employed as a Peon in the year 1977-78 against a leave vacancy in which capacity he served up to the year 1982 and thereafter the Deputy Commissioner made regular appointment of Shri Ram Pal and so, the services of the petitioner were dispensed with.

8. There is no denying the fact that the respondent committee did not comply with the mandatory provisions of section 25F of the said Act while terminating the services of the petitioner, because no notice pay or retrenchment compensation was paid to him, though the petitioner has actually worked for more than 240 days with the respondent during the last 12 calendar months from the date of his termination. This is evident from the data furnished by the respondent in the

Court on 26th November, 1985, that the petitioner has worked for 322 days with the respondent even from January, 1982 to November, 1932. While calculating 240 days the Court has to take into consideration last twelve calendar months from the date of termination. So, there is no escape from the conclusion that the petitioner has worked for more than 240 days with the respondent during the last twelve calendar months from the date of his termination and as such, statutory provisions of section 25F are fully attracted in this case, compliance of which was never made by the respondent and so, the order of termination passed was illegal and arbitrary and cannot be sustained.

ISSUE No. 1:

9. To buttress this plea, the respondent has drawn my attention to Annexure C of the written statement, copy of the letter issued by the Labour Department, Government of Haryana that the Board of School Education, Haryana, is not an "industry", because its employees are governed by the provisions of Punjab Civil Services Rules. Taking a cue from this letter, on behalf of the respondent it was contended that since the provisions of Punjab Civil Services Rules are applicable to the employees of the respondent committee, so, Industrial Disputes Act, 1947 will not apply. This contention is absolutely unfounded. *In the Banglore Water Supply and Sewerage Board case reported in* 1978 *Labour and Industrial Cases* 467 a seven Bench Judges of the Hon'ble Supreme Court of India dealt in detail about the scope sweep and ambit of the term "industry" as defined in section 2(j) of the said Act. Their Lordships were endorsing the law laid down in *Nagpur Municipality reported in AIR* 1960 *S.C.* 675 observed in para 67 of the judgment as under:—

> "Sri Justice Subha Rao, with uninhibited logic, chases this thought and reaches certain tests in Nagpur Municipality (AIR 1960 S.C. 675), speaking for a unanimous bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of "industry" is resolved in some measure. Although foreign decisions, word and phrases, lexical plenty and definitions from other legislations, were read before us, to stress the necessity of direct co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of services to the community, etc., as implied inarticulaterly in the concept of "industry", we by-pass them as but marginally persuasive. The ruling of this Court, the language and scheme of the Act and the well-known cannot of construction exert real pressure on our judgement. And, in this latter process, next to Banerji (AIR 1953 SC 58) comes Corporation of Nagpur (AIR 1960 SC 675) which spreads the canvas wide and illunines the expression 'analogous to trade or business', although it comes a few days after Hospital Mazdoor Sabha (AIR 1960 S.C. 610) decided by the same bench."

10. These observations of the Supreme Court clinches the controversy in favour of the petitioner and there is no difficulty in holding that the respondent Municipality especially its administrative wing falls within the ambit of the term "industry" as defined in section 2(j) of the said Act and as such, the provisions of the Industrial Disputes Act, 1947 will apply in this case. So, this issue is answered against the management.

11. In the light of my fore-going discussion, there is no difficulty in holding that the order of termination passed against the workman was illegal, unlawful and arbitrary, which was passed in flagrant dis-regard of the provisions of section 25F of the said Act and as such, the same is set aside and since the demand notice was raised by the petitioner after a lapse of just more than one year of his termination, he cannot be deprived from the benefits of back wages, because the Courts have usually frowned upon references delayed for more than three years after termination. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 24th December, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hissar.

Endorsement No. 19-85/14, dated the 2nd January, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hissar.